

STATE OF VERMONT
PUBLIC SERVICE BOARD

Dig Safe Notice No. 701

In Re FairPoint Communications, Alleged Violation of)
May 17, 2010, as reported by FairPoint Communications)

Order entered: 4/7/2011

ORDER RE: NOTICE OF PROBABLE VIOLATION

Background

1. Pursuant to 30 V.S.A. § 7001 et. seq., and Vermont Public Service Board Rule 3.800, the Vermont Department of Public Service ("Department") issued a Notice of Probable Violation of Underground Utility Damage Prevention System ("NOPV") to FairPoint Communications ("Respondent").
2. Incident Date: May 17, 2010
3. Incident Location: 123 Ethan Allen Drive, Colchester, VT
4. Name and Address of Company that Reported the Incident to the Department: FairPoint Communications, 800 Hinesburg Road, South Burlington, VT 05403
5. Date Incident Reported to Effected Utility: May 17, 2010
6. Date NOPV issued by Department: November 4, 2010 (#1822)
7. Department's Statement of Evidence Supporting the Alleged Violation: "The Department of Public Service investigated this incident and determined the following details. On 5/11/10, D&M Petroleum made a notice of excavation activities to Dig Safe System Inc. Fairpoint did not accurately locate and mark its underground facilities in the area of the proposed excavation. During the course of the excavation an unmarked Fairpoint service wire was struck by E&M Petroleum. This damage did not result in a service loss to any customers, however Fairpoint had to make a repair to the wire. E&M Petroleum notified Fairpoint of the damaged facility. The Department of Public Service issued 9 Notices of Probable Violation (NOPV's) to FairPoint Communications during the 12 months preceding this incident."
8. Statute, Rule, Regulation or Order Allegedly violated: 30 V.S.A. § 7006

9. The Department's Recommended Remedial Action(s) (Including Civil Penalties): Civil penalty in the amount of One Thousand Two Hundred Dollars (\$1,200.00); attendance at a Department-approved underground damage prevention seminar; submission of the Company's current underground facility damage protection written procedures (Damage Prevention Plan [DPP]) to the Department; and FairPoint Communications management participation with the Department in a collaborative review of the FairPoint DPP and the implementation of plan revisions for improvement, developed during the review.
10. The NOPV, along with instructions concerning how to respond to the NOPV, was sent to FairPoint Communications on November 4, 2010.¹ To date, FairPoint Communications has not filed a response to the NOPV.

Conclusion and Order

Public Service Board ("Board") Rule 3.807(C) provides:

Within 30 days of receipt of a Notice of Probable Violation, any person who is the subject of an enforcement proceeding pursuant to that Notice shall make a written response to the Department and to the Board, with a copy to the Company that reported the alleged violation.

Accordingly, we conclude that it is appropriate to make a binding disposition of this matter *by default*, pursuant to 3 V.S.A. Section 809(d).

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

(1) Within thirty days of the date of this Order, Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications ("FairPoint Communications"), shall pay a civil penalty in the amount of One Thousand Two Hundred Dollars (\$1,200.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont, and sent to the Public Service Board at 112 State Street, Montpelier, VT 05620-2701;

(2) FairPoint Communications, shall attend an Underground Damage Prevention Seminar at such time and place as determined by the Vermont Department of Public Service ("Department");

(3) FairPoint Communications shall submit its current underground facility damage protection written procedures (Damage Prevention Plan [DPP]) to the Department; and

1. Letter of Hans E. Mertens, dated November 4, 2010.

(4) FairPoint Communications management shall participate with the Department in a collaborative review of the FairPoint DPP and the implementation of plan revisions for improvement, developed during the review.

Dated at Montpelier, Vermont, this 7th day of April, 2011.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: April 7, 2011

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.